Supreme Court, U.S.
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No. 85-1098

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1985

CRAIG VEVODA, KENNETH CHAMNESS and
MARK SOTTANA,
*Petitioners,*

VS.

MILK DRIVERS AND DAIRY EMPLOYEES
UNION, TEAMSTERS LOCAL 302,
*Respondent.*

**Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## QUESTION PRESENTED

1. Whether the National Labor Relations Act prohibits enforcement by a union of its bylaws in an internal disciplinary proceeding against union members who acquired membership without having been informed by the union that they were entitled by law to avoid formal union membership under a union security agreement so long as they paid union dues and fees.

2. Whether the exclusivity of the jurisdiction of the National Labor Relations Board to determine questions of compulsory union membership arising under the unfair labor practice provisions of the National Labor Relations Act preempts the authority of a federal district court to resolve the merits of the issue presented in Question No. 1, stated above.

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### OPINIONS BELOW

The decision of the Court of Appeals is reported at 772 F.2d 530 (1985). The decision of the United States District Court for the Northern District of California is reported at 587 F. Supp. 483 (1984).

### JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

## STATUTORY PROVISIONS INVOLVED

Petitioner has reprinted relevant provisions of the National Labor Relations Act, the Judicial Code and sections of the California Civil Code. In addition, Sections 8(a)(3) and 8(b)(2) of the National Labor Relations Act, not cited by Petitioners, are also relevant to disposition of this case, and are reprinted as an Appendix to this Opposition.

## STATEMENT OF THE CASE

### A. The Nature of the Case and the Underlying Facts

This proceeding was instituted by Respondent, hereafter referred to as the Union, to collect fines which it had imposed on Petitioners, all of whom were Union members during the relevant period of time, following internal disciplinary proceedings against them. Petitioners were found by the Union's trial board to have violated the Union's Bylaws and the Constitution of the International organization with which the Union is affiliated by crossing and working behind picket lines during a strike. When Petitioners refused to pay the fines, complaint was filed in a municipal court of the State of California, but the case was thereafter removed by Petitioners to the United States District Court for the Northern District of California.

The case was disposed of by the District Court on Petitioners' motion for summary judgment, sustaining Petitioners' contention that the "contract" of membership between Petitioners and the Union, as expressed in its Bylaws, could not be enforced because Petitioners had not been advised when they became members that they were legally entitled to avoid formal membership under the

union security clause of the collective bargaining agreement which applied to them so long as they paid Union dues and fees.[1]

The circumstances under which Petitioners acquired membership in the Union have been accurately summarized in the decision of the court below as follows (Pet. App. A, pp.2-3):

> "Defendants Vevoda and Sottana became employees of Lucky Stores in 1976 and joined the union shortly thereafter. Defendant Chamness had joined the union in 1956, and transferred to the plaintiff Local in 1975 when he became an employee of Lucky Stores. According to the uncontroverted affidavits of defendants Vevoda and Sottana, a representative of the employer told each of them, soon after they were employed, that they had to go to the Teamsters Local 'to fulfill certain contractual obligations' as a condition of continued employment. The affidavits further state that when Vevoda and Sottana arrived at the Local, a receptionist told them to fill out certain forms which defendants believe included a 'membership application' form, and to attend an orientation meeting. At the orientation meeting, an officer of Local 302 told them they were required to take a membership oath.
>
> Defendant Chamness joined a different local in 1956 and later transferred to Local 302. This affidavit contains parallel statements regarding his experience with his first employer and local. However, the record does not show that any representative or employee of Local 302 made any statements whatsoever to Chamness about union membership.

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[1] The contention sustained by the District Court was not the only defense which Petitioners interposed to the collection suit. Petitioners also argued that their motion for summary judgment should be granted because the Bylaw provision prohibiting members from crossing picket lines constituted an unenforceable contract of adhesion; that they were not afforded a fair trial in the disciplinary proceeding; that the Bylaw provision was in conflict with an implied no-strike clause in the collective bargaining agreement; and that Petitioners were performing supervisory work behind the picket line and were therefore immunized from discipline. The District Court did not consider these contentions in granting the motion for summary judgment, relying solely on the ground that Petitioners had been misled into believing that formal union membership was required of them in order to keep their jobs (Pet. App.B2).

> All three defendants stated that they had never been told by any union representative that they could retain employment by merely paying dues and other fees. Further, they have all stated that if they had known that they did not have to become full-fledged union members, they would not have become members of Local 302. However, none of the defendants has alleged that the Union ever threatened to fire him if he did not become a full-fledged member."

At all times relevant to this proceeding a union security provision was in effect between the Union and Lucky Stores which, in conventional phraseology required "membership in the Local Union" as a condition of employment following the statutory 30 day waiting period. (Pet. App. p.8,n.1)

**B. The Decision of the District Court**

The District Court in granting Petitioners' motion for summary judgment reasoned as follows: that the Union fines levied against Petitioners could be enforced only if their Union membership was voluntary; that their membership was actually the consequence of their wrongly held belief that formal Union membership was necessary to retain employment; that they would not have become or remained formal Union members had they been informed that such membership was not a condition of employment; and that the contractual obligations they had as Union members were the product of having been "misled by express statements of union personnel into believing that they were required to become full members of the union in order to retain their jobs" (Pet. App. A, p.2). In these circumstances, according to the District Court, the contract of membership, i.e., the Union Bylaws, could not be enforced against Petitioners because they had not been entered into "knowingly and willingly" (*ibid.*).

The District Court also rejected the Union's contention that the question of whether the Union had an affirmative obligation to

inform Petitioners that they could keep their jobs without becoming formal Union members is a matter which lies within the exclusive regulatory authority of the National Labor Relations Board, and thus is beyond the authority of the Court to adjudicate (Pet. App. B, pp.3-6). The Court concluded, to the contrary, that the question of whether union membership is voluntary is "deeply rooted in local law" and can properly be raised as a defense in a case such as this (*id.* p.4).

### C. The Decision of the Court of Appeals

The court below considered both of the issues decided by the District Court, and rejected the District Court's analysis in each instance. With respect to the question of whether the District Court's authority had been preempted by the National Labor Relations Board, the court below pointed out that Petitioner's defense to the collection suit was premised on interpretative decisions of the Board and the Courts relating to the manner in which the National Labor Relations Act regulates "a union's dealings with employees about union membership" (Pet. App.A, pp. 4-5). Accordingly, the court below concluded that Petitioner's defense called for "judicial scrutiny" of "conduct regulated by sections 7 and 8 of the NLRB," and was therefore "within the exclusive jurisdiction of the NLRB in the context of unfair labor practice disputes" (*id.* p.5).

The Court of Appeals, however, did not rest its reversal of the District Court's decision on jurisdictional grounds alone. As explained in the decision below (Pet. App.A, pp.6-7):

> "Even if we were to agree with Petitioners, however, that the subject of their fraud defense is a matter of particular local concern and is not preempted by the primary jurisdiction of the Board, see *Belknap, Inc. v. Hale*, 463 U.S. 491, ___, 103 S. Ct. 3172, 3177, 77 L.Ed.2d 798 (1983), we would have to reverse the district court. The record does not factually support the assertions, repeated throughout appellees' brief on appeal,